

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 01-1251-DHW
Chapter 11

FORREST E. WATERS, III,

Debtor.

FORREST E. WATERS, III,

Plaintiff,

v.

Adv. Proc. No. 02-03051-DHW

WILDFOREST, INC., an Alabama corporation, WILDFOREST, INC., as general and limited partner of WildForest, Ltd., WILDFOREST, LTD., MARLIN FORD WATERS, individually and as general partner of WildForest, Ltd., GREGORY V. BRAGG, individually and as general partner of WildForest, Ltd., KELLY BISSO, individually and as general partner of WildForest, Ltd., and LUTHER EDWARDS, individually and as general partner of WildForest, Ltd.,

Defendants.

MEMORANDUM OPINION

Defendants WildForest, Ltd., WildForest, Inc., Gregg Bragg, and Luther Edwards filed a motion on January 6, 2003 to dismiss this adversary proceeding or for abstention and/or summary judgment.

The motion was set for hearing on February 24, 2003 but was continued from time to time at the request of the parties. The matter came on for a final telephonic hearing on April 14, 2003. Participating in the hearing were John R. Lavette on behalf of the movants, Von G. Memory for the debtor, David B. Anderson for the Harris estate, and Stephen L. Sexton for defendants Kelly Bisso and Marlin Ford Waters.

The debtor, a limited partner in WildForest, Ltd., filed this complaint, as amended, seeking, *inter alia*, to determine the validity, priority, or extent of a lien on the debtor's partnership interest.¹ The complaint also requests a partnership accounting, sale of the partnership property, dissolution of the partnership, disbursement of partnership funds upon dissolution, determination that fiduciary duties have been breached, and/or the sale of the debtor's limited partnership interest. All of these claims are state law based claims.

This court derives its jurisdiction from 28 U.S.C. § 1334 and the general order of reference of the United States District Court. Under § 1334(b), this court's jurisdiction is limited to proceedings which arise under title 11, those which arise in title 11 cases, and proceedings which are related to a case under title 11.²

A proceeding that arises under title 11 is a case that involves a "cause of action created or determined by a statutory provision of title 11." *Maitland v. Mitchell (In re Harris Pine Mills)*, 44 F. 3d 1431, 1435

¹ There is, however, no lien on the debtor's partnership interest with the possible exception of that of the Harris estate. The debtor in this adversary proceeding is not contesting the claim of the Harris estate or its lien on the debtor's partnership interest.

² 28 U.S.C. § 1334(b) provides:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(9th Cir. 1995); *Carter v. Rodgers*, 220 F. 3d 1249, 1253 (11th Cir. 2000). The cause of action in the case at bar is clearly not one which emanates directly from the Bankruptcy Code.

A proceeding that arises in a title 11 case is one that, while not expressly created under title 11, has no meaning or utility in any other forum. Such proceedings involve administrative matters that arise only in bankruptcy cases and would not exist outside the bankruptcy context. *Carter*, 220 F.3d at 1253; *Maitland*, 44 F.3d at 1435. The case *sub judice* is clearly not one of this sort. This cause of action exists independent of the bankruptcy case and could exist in another forum, particularly the state courts.

Finally, a proceeding is related to one under title 11 if its outcome could conceivably affect the administration of the bankruptcy estate. *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 787 (11th Cir. 1990). In this adversary proceeding, however, the outcome could have no conceivable effect upon the estate's administration because there is no estate. By force of statute, the property of the estate vested in the debtor when the chapter 11 plan was confirmed.³ The confirmed plan binds the debtor and his creditors to its terms, and this plan is unfettered by any contingencies predicated upon the outcome of the litigation involved here. Hence, there is not even mere "related to" jurisdiction in this court.

Assuming *arguendo* that this court had jurisdiction under its "related to" source, the result would nevertheless be the same. Under 28 U.S.C. § 1334(c)(2), abstention from hearing this case is mandatory.⁴

³ 11 U.S.C. § 1141(b) provides: "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor."

⁴ 28 U.S.C. § 1334 (c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title

Mandatory abstention and dismissal of the State law based proceeding is the result when the court's jurisdiction is only related to a case under title 11. There has been no argument by the debtor that the matter could not be timely adjudicated in the State forum.

Finally, the debtor argues that this proceeding is one for recovery or for turnover of estate property. This, the debtor contends, bestows "arising under" jurisdiction on this court in that such actions emanate from the Bankruptcy Code. Although the court disagrees, assume that the debtor's position has merit. The result, nevertheless, is the same. Under 28 U.S.C. § 1334 (c)(1), a court may abstain from hearing any proceeding in the interest of justice, or in the interest of comity with State courts or respect for State law.⁵ Again, this litigation exclusively involves State law claims. Those claims center upon the interpretation and application of the State's limited partnership law which state courts are uniquely suited to resolve. Further, all of the defendants are subject to the State court's jurisdiction. It is not clear that this court has jurisdiction over all of the defendants, some of whom have not filed claims in this case. These considerations lead the court to conclude that even if it had "arising under" jurisdiction, that it should permissively abstain.

11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

⁵ 28 U.S.C. § 1334 (c)(1) provides:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

For the reasons stated herein, an order will enter consonant with this memorandum opinion.

Done this 23rd day of April, 2003.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

Von G. Memory, Attorney for Debtor

John R. Lavette, Attorney for Defendants

WildForest, Ltd., WildForest, Inc.,

Gregg Bragg and Luther Edwards

David B. Anderson, Attorney for the Harris Estate

Stephen L. Sexton, Attorney for Defendants

Kelly Bisso and Marlin Ford Waters